

Overview of the Crime Victim's Rights Act

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In this chapter. . .

This overview of the Crime Victim's Rights Act ("CVRA") describes the three articles of the CVRA, lists the common elements of those three articles, and gives definitions of terms used in the CVRA. The following subjects are included in this chapter:

- F the offenses that fall under the CVRA;
- F the applicability of each article of the CVRA, including a chart contained in Section 3.1(A);
- F brief descriptions of the various procedures used to handle cases involving juveniles, including a chart in Section 3.2(H); and
- F a detailed discussion of who qualifies as a "victim" under the CVRA.

Definitions of terms not provided in the CVRA appear throughout the text of this manual where relevant.

3.1 Applicability and Structure of the Crime Victim's Rights Act ("CVRA")

A. Offenses and Offenders Covered by the CVRA

The Crime Victim's Rights Act, MCL 780.751 et seq.; MSA 28.1287(751) et seq., is divided into three articles, each dealing with different offenses, offenders, and courts.

F Article 1 ("Felony Article")

Article 1 applies to felonies committed by persons age 17 or older. MCL 780.752(1)(b); MSA 28.1287(752)(1)(b). This article also applies to juveniles at least 14 but less than 17 years old who are charged with certain serious felonies, where the prosecuting attorney has chosen to proceed in the Criminal Division of Circuit Court rather than in the Family Division of Circuit Court.* Proceedings under the felony article occur in the Criminal Division of Circuit Court, after arraignment and preliminary examination in District Court.

F Article 2 ("Juvenile Article")

Article 2 applies to felonies and "serious misdemeanors" committed by juveniles. MCL 780.781(1)(f); MSA 28.1287(781)(1)(f). For purposes of the juvenile article, "juveniles" are individuals less than 17 years old who are charged in delinquency or "designated" proceedings. MCL 780.781(1)(d); MSA 28.1287(781)(1)(d). This article also applies to hearings on motions to waive the jurisdiction of the Family Division of Circuit Court over juveniles who are at least 14 but less than 17 years old and charged with felonies.* Proceedings under the juvenile article occur in the Family Division of Circuit Court. If the Family Division of Circuit Court waives its jurisdiction over the juvenile, proceedings occur in the Criminal Division of Circuit Court and Article 1 applies.

F Article 3 ("Misdemeanor Article")

Article 3 applies to "serious misdemeanors" committed by persons age 17 or older.* MCL 780.811(1)(a); MSA 28.1287(811)(1)(a). Proceedings under this article occur in District Court.

*See Section 3.2(H), below, for a discussion of these "automatic waiver" proceedings.

*See Sections 3.2(F) and 3.2(H) for discussion of designated, delinquency, and "traditional waiver" proceedings.

*See Section 3.2(N), below, for a list of "serious misdemeanors."

The following chart illustrates the major differences among the three articles.

	Offense	Offender	Court
Article 1 (“Felony Article”), MCL 780.751–780.775	Any felony.	Adult defendants charged with or convicted of felonies. and Juveniles at least 14 but less than 17 years old charged with certain serious felonies, where the prosecutor has filed a criminal complaint in District Court rather than a delinquency petition in the Family Division of Circuit Court.	Criminal Division of Circuit Court (after arraignment and preliminary examination in District Court).
Article 2 (“Juvenile Article”), MCL 780.781–780.802	Any felony and “serious misdemeanors.”	Juveniles less than 17 years old alleged or found to be within the court’s jurisdiction over delinquency or “designated” proceedings. Includes hearings on prosecutor’s motion to waive the Family Division of Circuit Court’s jurisdiction.	Family Division of Circuit Court. After waiver of jurisdiction, proceedings occur in the Criminal Division of Circuit Court.
Article 3 (“Misdemeanor Article”), MCL 780.811–780.834	“Serious misdemeanors.”	Adult offenders charged with or convicted of serious misdemeanors.	District Court.

B. Elements of the CVRA

The three articles of the CVRA contain many common elements. These common elements are summarized below. Each article of the CVRA contains provisions that:

- F define key terms used in the article;
- F require law enforcement agencies to give crime victims information regarding the availability of services and reimbursement of certain expenses, and the telephone number of the prosecuting attorney;
- F require law enforcement agencies to promptly return a victim’s property after it is used in the investigation of the offense or as evidence at trial;

- F require prosecuting attorneys, courts, law enforcement agencies, and corrections officials to give victims notice of hearings and the offender's status within the correctional system;
- F allow for limited consultation with the prosecuting attorney prior to diversion, informal juvenile dispositions, plea agreements, and trial;
- F require limitations on access to information about the victim to prevent further harm to the victim;
- F allow for detention of the offender if the victim is threatened or intimidated;
- F allow for separate waiting areas in the courthouse for the victim and the defendant or juvenile;
- F allow for expedited trial in cases involving certain offenses or victims;
- F enforce the victim's right to be present at trial;
- F enforce the victim's right to give, in writing, orally, or both, a victim impact statement to the court;
- F allow for restitution from the offender;
- F protect victims and their representatives from being disciplined or discharged by their employers for attending hearings;
- F allow for forfeiture of proceeds obtained by the offender from the sale of media depictions of the offense;
- F require the victim to keep agencies charged with providing notice to the victim apprised of a current address and telephone number; and
- F limit the remedies available to the offender and victim for violations of the CVRA.

3.2 Definitions of Terms Used in the CVRA

A. "Assaultive Crime"

1. A conviction or adjudication for some "assaultive crimes" may not be set aside.

An adult or juvenile offender may apply to have a conviction or juvenile adjudication "set aside" after five years if the offender has only been convicted or adjudicated once. MCL 780.621; MSA 28.1274(101), and MCL 712A.18e; MSA 27.3178(598.18e). "Set aside" means to "negate or rescind." MCR 5.925(E)(1)(b). If the victim's name is known, the prosecuting attorney must notify the victim of an "assaultive crime" or "serious misdemeanor"* that the defendant or juvenile has applied to have the conviction or

*See Section 3.2(N) ("serious misdemeanor").

adjudication “set aside.” MCL 780.772a; MSA 28.1287(772a), MCL 780.796a(1); MSA 28.1287(796a)(1), and MCL 780.827a; MSA 28.1287(827a).

In addition to the requirement that the defendant or juvenile only have one conviction or adjudication, there are limitations on the types of offenses that may be “set aside.” MCL 712A.18e(2)(a); MSA 27.3178(598.18e)(2)(a), governing setting aside juvenile adjudications, provides that a person shall not apply to have set aside, and the court shall not set aside, an adjudication for an offense that if committed by an adult would be a felony for which the maximum punishment is life imprisonment.

Similarly, MCL 780.621(2); MSA 28.1274(101)(2), the statute governing setting aside adult convictions provides that a person shall not apply to have set aside, and the court shall not set aside, any of the following:

- F a conviction of a felony for which the maximum punishment is life imprisonment, or an attempt to commit such a felony;
- F a conviction for a violation or attempted violation of any of the following statutes:
 - second-degree criminal sexual conduct, MCL 750.520c; MSA 28.788(3);
 - third-degree criminal sexual conduct, MCL 750.520d; MSA 28.788(4);
 - assault with intent to commit criminal sexual conduct, MCL 750.520g; MSA 28.788(7).

Note: MCL 780.621; MSA 28.1274(101), was amended, effective April 1, 1997, to preclude setting aside convictions of the criminal sexual conduct offenses listed here. See 1996 PA 573. The Michigan Court of Appeals has held that the amendment must be given retroactive effect. *People v Link*, 225 Mich App 211, 214–18 (1997).

“Assaultive crime” is defined in MCL 770.9a; MSA 28.1106(1). MCL 780.772a; MSA 28.1287(772a), and MCL 780.796a(2)(a); MSA 28.1287(796a)(2)(a). However, because of the limitations noted above on the types of offenses that may be set aside, only certain “assaultive crimes” are eligible to be set aside. The following list contains all of the “assaultive crimes” contained in MCL 770.9a(3); MSA 28.1106(1)(3), **with those offenses that may *not* be set aside in *italics*:**

- F felonious assault, MCL 750.82; MSA 28.277;
- F *assault with intent to commit murder*, MCL 750.83; MSA 28.278;

- F assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279;
- F assault with intent to maim, MCL 750.86; MSA 28.281;
- F assault with intent to commit a felony, MCL 750.87; MSA 28.282;
- F assault with intent to commit unarmed robbery, MCL 750.88; MSA 28.283;
- F *assault with intent to commit armed robbery, MCL 750.89; MSA 28.284;*
- F *first-degree murder, MCL 750.316; MSA 28.548;*
- F *second-degree murder, MCL 750.317; MSA 28.549;*
- F manslaughter, MCL 750.321; MSA 28.553;
- F *kidnapping, MCL 750.349; MSA 28.581;*
- F *prisoner taking another as hostage, MCL 750.349a; MSA 28.581(1);*
- F *kidnapping a child under age 14, MCL 750.350; MSA 28.582;*
- F mayhem, MCL 750.397; MSA 28.629;
- F *first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2);*
- F *second-degree criminal sexual conduct, MCL 750.520c; MSA 28.788(3);*
- F *third-degree criminal sexual conduct, MCL 750.520d; MSA 28.788(4);*
- F fourth-degree criminal sexual conduct, MCL 750.520e; MSA 28.788(5);
- F *assault with intent to commit criminal sexual conduct, MCL 750.520g; MSA 28.788(7);*
- F *armed robbery, MCL 750.529; MSA 28.797;*
- F *carjacking, MCL 750.529a; MSA 28.797(a); and*
- F unarmed robbery, MCL 750.530; MSA 28.798.

2. Diversion is not available for juveniles charged with “assaultive crimes.”

Juveniles accused of or charged with an “assaultive crime” must not be diverted from formal court procedures. MCL 722.823(3); MSA 25.243(53)(3), and MCL 722.822(a); MSA 25.243(52)(a).*

*See Section 6.4(B) for a brief description of “juvenile diversion.”

B. “County Juvenile Agency”

A “county juvenile agency” is an agency operated by a county that has assumed financial responsibility for all juveniles under court jurisdiction in the county. MCL 780.752(1)(a); MSA 28.1287(752)(1)(a), MCL 780.781(1)(a); MSA 28.1287(781)(1)(a), and MCL 45.623; MSA 5.1198(3). A “county juvenile agency” must be created pursuant to the “County Juvenile Agency Act,” MCL 45.621 et seq.; MSA 5.1198(1) et seq. Because the act applies only to a county that is eligible for transfer of federal “Title IV-E funds”^{*} under a 1997 waiver, the act apparently only applies to Wayne County. MCL 45.626; MSA 5.1198(6).

^{*}“Title IV-E funds” are federal funds used to partially reimburse states for costs associated with delinquent and dependent children in foster care.

Articles 1 and 2 of the CVRA, the felony and juvenile articles of the act, require a “county juvenile agency” to fulfill certain requirements previously imposed only on the “juvenile court” or Family Independence Agency, such as notifying the victim of a juvenile’s discharge, transfer, or escape. MCL 780.770a; MSA 28.1287(770a), and MCL 780.798; MSA 28.1287(798).

C. “Court”

Only Article 2 of the CVRA (the juvenile article) contains a definition of “court.” MCL 780.781(1)(b); MSA 28.1287(781)(1)(b), states that “[c]ourt” means the family division of circuit court.” The Family Division of Circuit Court has jurisdiction over juvenile delinquency cases. MCL 600.1021(1)(e); MSA 27A.1021(1)(e).

D. “Crime”

Article 1 of the CVRA (the felony article) applies to “crimes,” which are defined in MCL 780.752(1)(b); MSA 28.1287(752)(1)(b), as offenses for which the offender, upon conviction, may be sentenced to imprisonment for more than one year, or offenses which are designated by law as felonies.

E. “Defendant”

A “defendant” is a person charged with or convicted of committing a crime or serious misdemeanor against a victim. MCL 780.752(1)(c); MSA 28.1287(752)(1)(c), and MCL 780.811(1)(b); MSA 28.1287(811)(1)(b). This definition applies to offenses falling under the felony and misdemeanor articles of the CVRA, but not to offenses falling under the juvenile article. The juvenile article refers to the person who committed the offense against the victim as the “juvenile,” whether the juvenile is subject to delinquency, designated, or “traditional waiver” proceedings.^{*} In all juvenile proceedings, juveniles may also be referred to as “respondents.”

^{*}See Section 3.2(H), below, for a discussion of the different types of proceedings involving juveniles.

F. “Designated Case”

*See Miller, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings* (MJI, 1998), Chapters 16–21.

*See Section 10.12 for a discussion of this provision.

A “[d]esignated case” means a case . . . in which the juvenile is to be tried in the same manner as an adult under . . . MCL 712A.2d.” MCL 780.781(1)(c); MSA 28.1287(781)(1)(c). Pursuant to MCL 712A.2d; MSA 27.3178(598.2d), a delinquency case may be “designated” by the prosecuting attorney or court for criminal trial in the Family Division of Circuit Court in the same manner as an adult. Article 2 of the CVRA (the juvenile article) applies to designated proceedings.*

However, for purposes of enforcing a restitution order against the parent of a juvenile who has been convicted in a “designated case,” the felony article applies. MCL 780.766(15)(a); MSA 28.1287(766)(15)(a).*

G. “Final Disposition”

The term “final disposition” applies to cases under the felony and misdemeanor articles of the CVRA. It means “the ultimate termination of the criminal prosecution of a defendant including, but not limited to, dismissal, acquittal, or imposition of sentence by the court.” MCL 780.752(1)(d); MSA 28.1287(752)(1)(d), and MCL 780.811(1)(c); MSA 28.1287(811)(1)(c).

H. “Juvenile”

1. Different articles of the CVRA apply depending upon which of the four types of juvenile proceedings is involved.

*See Section 3.2(F), above, for a brief description of “designated proceedings.”

For purposes of the juvenile article of the CVRA (Article 2), “juvenile” is defined as an individual alleged or found to be within the court’s jurisdiction over delinquency and “designated” proceedings. MCL 780.781(1)(d); MSA 28.1287(781)(1)(d).* When used in the context of a delinquency or “designated” proceeding, “juvenile” means a person under 17 years of age. MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1).

*See Miller, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings* (MJI, 1998), Chapter 24.

The juvenile article of the CVRA also applies to “traditional waiver” proceedings.* For juveniles charged with felonies in “traditional waiver” proceedings, the prosecuting attorney files a motion asking the Family Division of Circuit Court to waive its jurisdiction to allow the juvenile to be tried as an adult in the Criminal Division of Circuit Court. If the Family Division waives its delinquency jurisdiction over the juvenile, a criminal trial takes place in the Criminal Division. MCL 712A.4; MSA 27.3178(598.4). Article 2 of the CVRA (the juvenile article) applies to hearings on the prosecutor’s motion to waive jurisdiction; if the court waives its jurisdiction over the juvenile, Article 1 (the felony article) applies to the proceedings in the Criminal Division of Circuit Court. If the court declines to waive its jurisdiction over the juvenile, Article 2 applies to the resulting delinquency proceeding. See MCR 5.950(D) (time requirements for delinquency trial following the court’s order denying the prosecuting attorney’s request for waiver).

For purposes of the felony article of the CVRA, “juvenile” is defined as “a person within the jurisdiction of the circuit court under . . . MCL 600.606.” MCL 780.752(1)(e); MSA 28.1287(752)(1)(e). MCL 600.606; MSA 27A.606, often called the “automatic waiver statute,”* states that the Circuit Court has jurisdiction to hear and determine certain enumerated serious felonies if committed by juveniles at least 14 but less than 17 years of age. In these cases, the prosecuting attorney may authorize the filing of a complaint and warrant in the District Court instead of filing a delinquency petition in the Family Division of Circuit Court. MCL 764.1f(1); MSA 28.860(6)(1), and MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1). Following a preliminary examination in District Court, the juvenile may be bound over to the Criminal Division of Circuit Court, which then has jurisdiction over the juvenile. MCL 766.13; MSA 28.931. If this occurs, the felony article (Article 1) applies to the case. If the juvenile is not bound over to the Criminal Division for trial, the juvenile article (Article 2) applies to the resulting juvenile delinquency case. See MCL 766.14(2)–(3); MSA 28.932(2)–(3) (the District Court must transfer the case to the Family Division of Circuit Court, but the prosecuting attorney may petition the court for “traditional waiver” of jurisdiction).

*See Miller, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings* (MJJ, 1998), Chapters 22–23.

The following table summarizes the different ways that a juvenile who has committed a criminal offense may be treated in the court system and the article of the CVRA that applies.

Type of Proceeding	Court With Jurisdiction	Offense Alleged	Article of CVRA That Applies
Delinquency	Family Division of Circuit Court.	Violation of municipal ordinance (other than civil infraction) or state law by juvenile under 17 years old.	Article 2 (juvenile article).
“Designated Case”	Family Division of Circuit Court.	Felony or misdemeanor by juvenile under 17 years old.	Article 2 (juvenile article).
“Traditional” Waiver	Criminal Division of Circuit Court, after waiver by Family Division of Circuit Court.	Felony by juvenile at least 14 but less than 17 years old.	Article 2 (juvenile article) applies to waiver hearing, and Article 1 (felony article) applies to proceedings following waiver. If the court declines to waive jurisdiction, Article 2 applies to the resulting juvenile delinquency case.

Type of Proceeding	Court With Jurisdiction	Offense Alleged	Article of CVRA That Applies
“Auto-matic” Waiver	Criminal Division of Circuit Court, after bindover from District Court.	Enumerated felony by juvenile at least 14 but less than 17 years old.	Article 1 (felony article). If the District Court does not bind the juvenile over for trial, Article 2 applies to the resulting juvenile delinquency case.

2. The court has different dispositional or sentencing options depending upon which type of juvenile proceeding is involved.

In juvenile delinquency cases, the dispositional options available to the court are contained in MCL 712A.18(1); MSA 27.3178(598.18)(1). The dispositional options contained in MCL 712A.18(1); MSA 27.3178(598.18)(1), include the following:

- F warning the juvenile and dismissing the petition;
- F placing the juvenile on in-home probation;
- F placing the juvenile in foster care;
- F committing the juvenile to a private institution or agency;
- F committing the juvenile to a public institution or agency;
- F ordering the juvenile to complete community service;
- F ordering the juvenile’s parents to participate in the juvenile’s treatment; and
- F placing the juvenile in juvenile boot camp.

When a juvenile has been convicted following designated or “automatic” waiver proceedings, a circuit court judge must decide whether to impose a juvenile disposition, commit the juvenile to the state until the juvenile turns 21 years of age, delay imposition of an adult sentence, or immediately sentence the juvenile as an adult.

- F In designated cases, the Family Division judge may order a juvenile disposition, sentence the juvenile as an adult, or delay imposition of the sentence and place the juvenile on probation. If the juvenile is sentenced as an adult, he or she may be committed to the Department of Corrections. If the judge delays imposition of sentence, the court must review the sentence until the end of the juvenile’s probationary period to determine whether sentence should be imposed at any point during that period. MCL 712A.18(1)(n); MSA 27.3178(598.18)(1)(n), and MCL 712A.18h; MSA 27.3178(598.18h).

F In “automatic” waiver cases, the Criminal Division judge must sentence the juvenile as an adult following conviction of one of 12 very serious offenses. For offenses not requiring adult sentencing, the judge may place the juvenile on probation and commit the juvenile to the Family Independence Agency (“FIA”) or impose an adult sentence. If the juvenile is committed to the FIA, the court must review the sentence until the end of the juvenile’s probationary period to determine whether sentence should be imposed at any point during that period. MCL 769.1(1) and (3); MSA 28.1072(1) and (3).

In “traditional” waiver cases, the juvenile must be sentenced as an adult following conviction. MCR 6.901(B) and *People v Cosby*, 189 Mich App 461, 464 (1991).

I. “Juvenile Facility”

“Juvenile facility,” when used in the felony and juvenile articles, means a court, county, or state facility, or a facility operated under contract with the state, in which a juvenile is detained or to which a juvenile has been committed. MCL 780.752(1)(f); MSA 28.1287(752)(1)(f), and MCL 780.781(1)(e); MSA 28.1287(781)(1)(e). The definition does not apply to Article 3, the misdemeanor article.

J. “Offense”

Article 2, the juvenile article, applies to an “offense” committed by a juvenile. An “offense” is one of the following:

- F an offense punishable by imprisonment for more than one year, or an offense expressly designated by law as a felony, or
- F a “serious misdemeanor.” MCL 780.781(1)(f); MSA 28.1287(781)(1)(f).*

For purposes of restitution in a case under Article 2, the juvenile article, “offense” means any criminal offense. MCL 780.794(1)(a); MSA 28.1287(794)(1)(a). For cases under Article 1, the felony article, restitution may be ordered for any felony. MCL 780.766(2); MSA 28.1287(766)(2). Under Article 3, the misdemeanor article, restitution may be ordered for any “misdemeanor.” “Misdemeanor” means a violation of a law of this state or a local ordinance that is punishable by imprisonment for not more than 1 year or a fine that is not a civil fine, but that is not a felony.” MCL 780.826(1)(a); MSA 28.1287(826)(1)(a).

*For a list of the “serious misdemeanors,” see Section 3.2(N), below.

*See Section 3.2(O), below, for the definition of “victim.”

*See Section 3.2(H), above, for a brief description of “automatic waiver” proceedings.

K. “Person”

“‘Person’ means an individual, organization, partnership, corporation, or governmental entity.” MCL 780.752(1)(g); MSA 28.1287(752)(1)(g), MCL 780.781(1)(g); MSA 28.1287(781)(1)(g), and MCL 780.811(1)(d); MSA 28.1287(811)(1)(d). The significance of this definition is that, through authorized representatives, businesses, including insurance companies, and governmental entities may be “victims” under the CVRA.*

L. “Prisoner”

When used in the felony article, “prisoner” means an individual “who has been convicted and sentenced to imprisonment or placement in a juvenile facility for having committed a crime or an act that would be a crime if committed by an adult against a victim.” MCL 780.752(1)(h); MSA 28.1287(752)(1)(h). Thus, this definition applies to adults sentenced to imprisonment and juveniles committed to juvenile facilities following their conviction in “automatic waiver” proceedings.*

When used in the misdemeanor article, “prisoner” means an individual “who has been convicted and sentenced to imprisonment for having committed a serious misdemeanor against a victim.” MCL 780.811(1)(f); MSA 28.1287(811)(1)(f).

M. “Prosecuting Attorney”

When the offense falls under the juvenile or misdemeanor articles of the CVRA, “prosecuting attorney” means a county prosecuting attorney, an assistant county prosecuting attorney, the attorney general, the deputy attorney general, an assistant attorney general, a special prosecuting attorney, or if an ordinance violation is alleged, an attorney for the political subdivision that enacted the ordinance. MCL 780.781(1)(h); MSA 28.1287(781)(1)(h), and MCL 780.811(1)(f); MSA 28.1287(811)(1)(f).

Because city and municipal attorneys do not prosecute felony violations, the definition included in the felony article does not include a city or municipal attorney. MCL 780.752(1)(i); MSA 28.1287(752)(1)(i).

N. “Serious Misdemeanor”

“Serious misdemeanors” are listed in MCL 780.811; MSA 28.1287(811). When a serious misdemeanor is alleged against an adult, Article 3, the misdemeanor article, applies. When a serious misdemeanor is alleged against a juvenile, Article 2, the juvenile article, applies. Serious misdemeanors are:

F assault and battery, MCL 750.81; MSA 28.276;

F aggravated assault, MCL 750.81a; MSA 28.276(1);

- F illegal entry, MCL 750.115; MSA 28.310;
- F fourth-degree child abuse, MCL 750.136b; MSA 28.331(2);
- F enticing a child for an immoral purpose, MCL 750.145a; MSA 28.341;
- F discharge of a firearm intentionally aimed at a person, MCL 750.234; MSA 28.431;
- F discharge of a firearm intentionally aimed at a person resulting in injury, MCL 750.235; MSA 28.432;
- F indecent exposure, MCL 750.335a; MSA 28.567(1);
- F stalking, MCL 750.411h; MSA 28.643(8);
- F leaving the scene of a personal-injury accident, MCL 257.617a; MSA 9.2317(1);

Note: In cases involving juveniles, the violation of MCL 257.617a; MSA 9.2317(1), must result in damage to another individual's property or physical injury or death to another individual for the CVRA to apply. MCL 780.781(1)(f)(iii); MSA 28.1287(781)(1)(f)(iii). In cases involving adults, the CVRA applies whenever this offense is alleged. MCL 780.811(1)(a)(ix); MSA 28.1287(811)(1)(a)(ix).

- F operating a vehicle while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood-alcohol content, MCL 257.625; MSA 9.2325, if the violation involves an accident resulting in damage to another individual's property or physical injury or death to another individual;
- F selling or furnishing alcoholic liquor to an individual less than 21 years of age, MCL 436.1701; MSA 18.1175(701), if the violation results in physical injury or death to any individual;
- F operating a vessel while under the influence of or impaired by intoxicating liquor or a controlled substance, or with an unlawful blood-alcohol content, MCL 324.80176(1) or (3); MSA 13A.80176(1) or (3), if the violation involves an accident resulting in damage to another individual's property or physical injury or death to any individual;
- F a violation of a local ordinance substantially corresponding to a violation listed above; and
- F a charged felony or serious misdemeanor that is subsequently reduced or pled to a misdemeanor. MCL 780.811(1)(a); MSA 28.1287(811)(1)(a).

O. “Victim”

1. **The definition of “victim” includes persons who suffered direct or threatened harm from the offense, relatives of deceased victims, and persons who may exercise the rights of incapacitated victims.**

The definition of “victim” contained in all three articles of the CVRA is substantially similar. MCL 780.752(1)(j); MSA 28.1287(752)(1)(j), MCL 780.781(1)(i); MSA 28.1287(781)(1)(i), and MCL 780.811(1)(g); MSA 28.1287(811)(1)(g). Each article defines “victim” to include the following individuals or entities:

*“Person” includes both individuals and business or governmental entities. See Section 3.2(K), above.

- F A person* who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime, offense, or serious misdemeanor.
- F If the victim is deceased, one of the following (other than the defendant or juvenile offender) in descending order of priority:
 - the spouse of the deceased victim (if any),
 - a child of the deceased victim if the child is 18 years old or older (if any),
 - a parent of the deceased victim (if any),
 - the guardian or custodian of a child of the deceased victim if the child is less than 18 years of age (if any),
 - a sibling of the deceased victim (if any),
 - a grandparent of the deceased victim (if any).
- F A parent, guardian, or custodian of a victim who is less than 18 years old if the parent, guardian, or custodian so chooses and is neither the defendant nor incarcerated.
- F A parent, guardian, or custodian of a victim who is mentally or emotionally unable to participate in the legal process if the parent, guardian, or custodian is neither the defendant nor incarcerated. The misdemeanor article requires the victim to be “so mentally incompetent that he or she cannot meaningfully understand or participate in the legal process” before a parent, guardian, or custodian may act as “victim.” In addition, the misdemeanor article allows a parent, guardian, or custodian who is “not the defendant *and* not incarcerated” to act as “victim.”

Under MCL 780.752(2); MSA 28.1287(752)(2), MCL 780.781(2); MSA 28.1287(781)(2), and MCL 780.811(2); MSA 28.1287(811)(2), if the primary victim “is physically or emotionally unable to exercise the privileges and rights under [the CVRA],” the victim may designate one of the following

persons “to act in his or her place while the physical or emotional disability continues”:

- F the victim’s spouse;
- F a child of the victim who is 18 years of age or older;
- F the victim’s parent, sibling, or grandparent; or
- F any other person who is at least 18 years old and who is neither the defendant nor incarcerated.*

The primary victim must tell the prosecuting attorney who is to act in the primary victim’s place, and notices required under the CVRA must still be sent only to the primary victim. *Id.**

2. What constitutes “direct or threatened” harm depends upon the facts of the case.

The general definition of “victim” contained in the CVRA includes persons who suffer “direct or threatened physical, financial, or emotional harm” as a result of an offense. No Michigan case has determined how direct the harm or threat must be for the person to qualify as a victim under this definition. However, the court must order restitution to all persons or organizations who suffered a financial loss as a result of “the course of conduct” that gave rise to defendant’s conviction, even though the offenses against particular victims did not result in conviction. *People v Gahan*, 456 Mich 264, 270–72 (1997). The court must also order restitution for the cost of psychological services incurred by victims.*

The Federal Victim and Witness Protection Act’s definition of “victim” is narrower than Michigan’s definition. The federal act’s definition does not include persons suffering threatened harm as the result of an offense; only “direct” victims fit the statutory definition of “victim.” 42 USC 10607(e)(2). Nonetheless, interpretation of the federal definition may be helpful in determining whether a person has suffered “direct” harm.* The United States Attorney General has provided the following guidance with regard to whether bystanders qualify as direct “victims”:

“[P]ersons whose injuries are indirectly caused by the crime are not entitled to the mandated services. Bystanders are generally not considered victims although there may be circumstances when a bystander does suffer an unusually direct injury. . . .

“For example, assume that a drug dealer sold methamphetamine . . . to 20 high school students who, as a result, became addicted to methamphetamine. The students require expensive drug rehabilitation, only part of which was covered by health insurance. The parents are

*This includes “victim-witness assistants.”

*See Chapter 7 for a detailed discussion of the notice requirements under the CVRA.

*See Section 10.9(A).

*The Michigan Supreme Court has referred to the VWPA when interpreting Michigan’s restitution provisions. See, e.g., *People v Law*, 459 Mich 419, 425 (1999), and *People v Grant*, 455 Mich 221, 230 (1997).

emotionally traumatized and some took time off work and lost wages. The students and parents would not be considered victims. . . .

“A much more difficult definitional issue arises in a bank robbery case. Typically, the bank, which suffers the pecuniary harm, is considered the primary victim. The question presented is whether the tellers, bank employees, and customers present in the bank at the time of the robbery are also ‘direct’ victims of the crime. The answer to this question will depend to a great extent on the facts of each specific case. If, for example, a robber points a gun at a teller as part of the robbery and as a result the teller is a trial witness and suffers psychological trauma, the harm is a direct result of the crime and the teller should qualify as a victim. . . . In comparison, a bank employee who was in another room and only heard people talking about the robbery may also suffer some trauma, but is much more indirectly harmed and should not be considered a victim Bystanders are normally not considered direct victims absent some unusual injury or vulnerability. For example, in the bank robbery scenario, a pregnant woman in the restroom at the bank who overhears the robbery and is traumatized to the extent that it causes a miscarriage may be treated as a direct victim.” United States Department of Justice, *Attorney General Guidelines for Victim and Witness Assistance 2000* (Washington, DC: Author, 2000), pp 7–8.

3. Incarcerated victims may only submit a written statement for the court’s consideration at sentencing.

*These provisions are effective June 1, 2001.

Under the felony and misdemeanor articles, incarcerated individuals cannot exercise the rights and privileges established for crime victims. However, incarcerated individuals who otherwise fall under the definition of “victim” may submit a written statement for the court’s consideration at sentencing. MCL 780.752(4); MSA 28.1287(752)(4), and MCL 780.811(4); MSA 28.1287(811)(4).*

4. Individuals charged with offenses arising out of the same transaction as the charge against the defendant or juvenile arose do not qualify as “victims.”

*These provisions are effective June 1, 2001.

The definition of “victim” excludes individuals charged with offenses arising out of the same transaction as the charge against the defendant. MCL 780.752(3); MSA 28.1287(752)(3), MCL 780.781(3); MSA 28.1287(781)(3), and MCL 780.811(3); MSA 28.1287(811)(3).* For guidance in determining whether an offense arises out of the same transaction as another offense, see MCR 6.120(B)(1)–(2) and *People v Tobey*, 401 Mich 141, 151–52 (1977) (for purposes of determining whether several charges may be joined for a single

trial, offenses are related if they are based on the same conduct, a series of connected acts, or acts constituting part of a single scheme or plan).

5. For purposes of restitution, the “victim” may be an individual or private or public organization that suffers direct harm from the offense.

For purposes of restitution, the “victim” may be an individual, sole proprietorship, partnership, corporation, association, governmental entity, or any other legal entity that suffers direct physical, emotional, or financial harm as a result of any crime committed by an adult or juvenile. MCL 780.766(1); MSA 28.1287(766)(1), MCL 780.794(1)(b); MSA 28.1287(794)(1)(b), and MCL 780.826(1)(b); MSA 28.1287(826)(1)(b).*

*See Chapter 10 for a detailed discussion of restitution.

P. “Victim Representative”

All three articles of the CVRA prohibit an employer from taking punitive actions against an employee who is a “victim” or “victim representative.” MCL 780.762; MSA 28.1287(762), MCL 780.790; MSA 28.1287(790), and MCL 780.822; MSA 28.1287(822).* “Victim representative” means:

*See Section 6.9 for a discussion of these provisions.

- F the guardian or custodian of a child of a deceased victim if the child is less than 18 years old;
- F the parent, guardian, or custodian of a victim of an assaultive crime, offense, or serious misdemeanor if the victim is less than 18 years old; or
- F a person who has been designated to act in place of a victim* of an assaultive crime, offense, or serious misdemeanor for the duration of the victim’s physical or emotional disability. MCL 780.762(3); MSA 28.1287(762)(3), MCL 780.790(3); MSA 28.1287(790)(3), and MCL 780.822(3); MSA 28.1287(822)(3).

*See Section 3.2(O)(1), above.

